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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3756 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJAN CHHABILDAS SHAH M/S RAJAN STEEL FABRICATORS

Versus

UP STATE BRIDGE CORPN LTD

Appearance:

MR MJ PARIKH for Petitioner

MR JITENDRA MALKAN for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/07/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner has prayed for a writ to direct the respondent-UP State Bridge Corporation Ltd and its officers to purchase the steel materials with respect

to bridge widening of Mahatma Gandhi and Swami Vivekanand Bridge in Ahmedabad by inviting public tenders. The petitioner has also prayed for direction to the respondent Company to hold enquiry in respect of allegations of malpractices against respondent No.3 and its officers. The case of the petitioner is that since the respondent Company is a "State" within the meaning of Article 12 of the Constitution, it could not have purchased the materials for widening of aforesaid two bridges in Ahmedabad cost of which is more than Rs.25 Crores. For the aforesaid work atleast around 3000 MT steel material is required to be used the cost of which is more than 4 Crores and the respondents are purchasing the material without inviting tenders. The allegation is that the respondent Nos 2 and 3 who are officers of the respondent company are obtaining different quotations from only one party and awarding the work to their favourite parties. It is further contended that inspite of the aforesaid being pointed out the respondent Company is not taking any action against the concerned officers.

2. In response to the notice issued by this Court affidavit-in-reply has been filed by Mr.Nand Kishor Prasad, Project Manager of the respondent Company at Ahmedabad raising following defences:

(i) The respondent Company is not a "State" within the meaning of Article 12 of the Constitution. In any view of the matter the respondent Company is working as a Contractor for construction projects pursuant to the contract given by the Ahmedabad Municipal Corporation and therefore it is not amenable to writ jurisdiction of this Court.

(ii) It is submitted that the contract work given by the Ahmedabad Municipal Corporation is a time bound work and therefore in the very nature of things it is not workable or possible for a contractor to invite tenders for purchase of every material, even when the contractor happens to be a Government enterprise.

(iii) It is submitted that the petition suffers from vice of supresio veri and suggesio falsi as all the quotation notices were sent by respondent No.2 to both the firms belonging to the petitioner who is carrying on business in the name of Rajan Steel Fabricators and/or Rambha Steel Corporation and in the past the quotations of the petitioner in the name of aforesaid firms were also considered subject to qualifying criteria and the petitioner was also given purchase/work order.

(iv) It is further pointed out in the affidavit-in-reply that as far as the work of steel fabrication is concerned the respondent Company itself carries on the said work and it has own machinery and therefore there is no question of giving fabrication work to any outside agency.

(v) As far as purchase of steel material is concerned, it is stated that after the change in the market scenario in the new financial year i.e.from 1.4.1999 the steel manufacturers, such as Steel Authority of India Ltd, Rashtriya Ispat Nigam and others have started supplying steel material to the end users like the respondent Company on credit basis and therefore the respondent Company has started purchasing the Steel directly from such manufacturers and therefore no major purchase is required to be made through local distributors from 15.5.99.

(vi) It is further pointed out that when the quotations were invited from the petitioner he did not comply with the conditions pertaining to Earnest Money Deposit but came out with his counter-proposals which were not acceptable to the respondent Company.

(vii) As regards allegations against respondent No.3, it is stated in the affidavit-in-reply that the petitioner was called upon to produce evidence before the respondent Company but the petitioner did not produce such evidence. In any view of the matter explanation was called for from the respondent No.3 and the said explanation was found to be satisfactory.

3. In view of the aforesaid clear stand taken by the respondents in the affidavit in reply this Court finds no substance in the petition . The question whether the respondent Company is a "State" within the meaning of Article 12 is not decided as the Court has gone into the merits of the contentions raised by the petitioner, and therefore, the question is kept open.

4. In view of the aforesaid discussion, the petition is dismissed with costs.

25.7.2000 (M.S.SHAH,J)